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JUN 29 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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June 29, 1994

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, D. C. 20554

Re: Implementation of Section 309(j) of the  
Communications Act - PP Docket No. 93-253

Dear Mr. Caton:

Transmitted herewith on behalf of Telephone and Data Systems, Inc. are an original and eleven copies of its Petition for Reconsideration of the Commission's final action adopted in its Second Report and Order in the above-referenced proceeding.

In the event that there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

  
George Y. Wheeler

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

JUN 29 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of Section 309(j) )  
of the Communications Act ) PP Docket No. 93-253  
 )  
Competitive Bidding )  
 )  
To: THE COMMISSION )

COMMENTS OF  
TELEPHONE AND DATA SYSTEMS, INC.

Telephone and Data Systems, Inc., on behalf of itself and its subsidiaries (collectively "TDS"), by its attorneys, files its comments regarding petitions for reconsideration pursuant to Section 1.429 of the Commission's rules of the final action adopted in the Commission's Second Report and Order in the above-captioned proceeding. We address here petitions as they affect the definition of "rural telephone company" in Section 1.2110(b)(3) of the Commission's rules and participation in "rural telephone" consortia qualifying for bidding preferences.<sup>1</sup>

INTRODUCTION

In our Petition for Reconsideration we requested that the Commission reassess its eligibility policies restricting participation in consortia qualifying for bidding preferences as "rural telephone companies." We described specific modifications to Section 1.2110(b)(3) of the Commission's rules which would

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<sup>1</sup> Specifically, we address the petitions filed by Anchorage Telephone Utility ("ATU"), Blooston, Mordkofskey, Jackson & Dickens ("Blooston"), National Telephone Cooperative Association ("NTCA") Rural Cellular Association ("RCA"), South Dakota Network, Inc. ("South Dakota") and U.S. Intelco Networks, Inc. ("U.S. Intelco").

encourage development of bidding consortia made up of rural telephone companies as follows: (a) eliminate the 50,000 LEC access line limit upon consortia applying as "rural telephone companies," (b) adopt an alternative qualifications test for companies directly or through affiliates with more than 50,000 LEC access lines to participate in such consortia provided they demonstrate that more than 50% of their access lines company-wide (including all affiliates) and also in the proposed license service area serve only communities with 10,000 or fewer inhabitants, and (c) require that the rural telephone companies in such consortia with 50,000 LEC access lines or fewer have the right to hold up to 60% of the equity in such consortia. The Commission should also condition each license granted to any such consortium so that if any company qualifying under our proposed alternative standard holds more than 40% of the equity of the consortium, it must offer at cost to the other members of the consortium (i.e. those with 50,000 LEC access lines or fewer) and to any other rural telephone companies in the license service area with 50,000 LEC access lines or fewer who might want to join the consortium, all or a prorata portion of its equity interest exceeding 40% during an appropriate period after initial licensing.

We believe that the promotion of "rural telephone" consortia as proposed in our petition is fully responsive to the Congressional mandate in the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"). For all of the reasons presented in our petition, we believe that adoption of our proposed modifications will promote

"development and rapid deployment of new technologies, products and services for the benefit of the public, including those residing in rural areas" and "ensure[s] that new and innovative technologies are readily accessible to the American people...by disseminating licenses among a wide variety of applicants including...rural telephone companies."<sup>2</sup>

Several other petitioners have suggested changes in the definition of "rural telephone company" to expand participation in consortia including NTCA, RSA, U.S. Intelco and Blooston. In our comments, we urge the Commission to recognize that size alone should not be the determining factor in either including or excluding a rural telephone company as an eligible participant in a "rural telephone" consortium. The essential test of such eligibility should be the company's presence and established record of service in communities with 10,000 or fewer inhabitants.

#### DISCUSSION

1. The Commission's rules should confirm the essential role of rural service to communities of 10,000 or fewer inhabitants in policies affecting "rural telephone" consortia.

We share many of the same concerns expressed by NTCA and RSA regarding the adverse impact in terms of rural service which arises under the Commission's narrow definition of "rural telephone" consortia. We support adoption of modified eligibility criteria so that rural telephone companies are not excluded because in the

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<sup>2</sup> Section 309(j)(3)(A) and (B) of the Communications Act.

aggregate their total access lines (including affiliated companies) exceeds the current 50,000 access line limit.

As NTCA states:

"Many truly small telephone companies are organized as holding companies or under corporate structures which encompass wholly or partially owned subsidiaries and affiliates. NTCA believes the Commission did not intend to exclude small, rural telcos just because of their corporate organizational structure. Thus it urges the Commission to modify its Order to remedy the apparently unintended effect of conflicting and unclear statements."<sup>3</sup>

RSA makes a similar point in its petition suggesting that the Commission should redefine "rural telephone company" in terms of service to communities with 10,000 or fewer inhabitants without applying the separate 50,000 access line test.<sup>4</sup>

The essential element in the expansion of "rural telephone" consortium eligibility should be the public policy supporting rural service which the Commission has defined in terms of service to communities with 10,000 or fewer inhabitants. The appropriate test for any modification of the Commission's current eligibility standards should be its effectiveness in promoting widespread, cost-effective, and rapid deployment of new and innovative technologies in rural areas.

In our petition, we described how the "rural telephone companies" in the State of Wisconsin which theoretically could bid<sup>5</sup>

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<sup>3</sup> NTCA, p. 6

<sup>4</sup> RSA, pp. 2 and 5.

<sup>5</sup> This assumes that the 50,000 access line cap would not preclude participation in a widely held consortium.

under the Commission's current rules serve a very small percentage of the total population of the Wisconsin communities with 10,000 or fewer inhabitants.<sup>6</sup> We have now done comparable calculations for the State of Kentucky and the State of Tennessee. In both states, comparable but even smaller percentages of the total populations of communities in each state with 10,000 or fewer inhabitants are served by companies eligible under the Commission's current definition of "rural telephone company."<sup>7</sup> This means that in each state, the majority, perhaps a substantial majority, of the "rural"

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<sup>6</sup> Our calculations were based on available information indicating that the total number of access lines served by all rural telephone companies with 50,000 or fewer access lines in Wisconsin was approximately 217,000. This is approximately 8.1% of the 2,682,404 total access lines in the state. The "rural" population including inhabitants of all areas of the state outside areas larger than 10,000 inhabitants constitutes approximately 47% of the total state population. This disparity between the percentage of access lines and the percentage of "rural" inhabitants illustrates the problem with the current rule. If access lines are considered generally proportional on a statewide basis, this suggests that less than 20% of the "rural" inhabitants of the state are served by rural telephone companies with 50,000 or fewer access lines. Conversely this also could mean that a substantial number, as much as 80%, of the "rural" population of the state is served by companies which are not eligible under the Commission's current rules.

<sup>7</sup> In Kentucky and Tennessee currently eligible rural telephone companies serve 127,000 and 144,000 access lines, approximately 7.3% and 5.3% of the total statewide access lines, respectively. Approximately 69% of the population of Kentucky is "rural" (living outside communities larger than 10,000 inhabitants). The comparable "rural" percentage of the population of Tennessee is approximately 52%. Assuming that access lines are generally proportional on a statewide basis, this suggests that very few, possibly less than 11% of the "rural" inhabitants of Kentucky and less than 11% in Tennessee, are served by rural telephone companies with 50,000 or fewer access lines. These disparities in numbers demonstrate how the Commission's eligibility restrictions effectively limit incentives for rural service expansion mandated by Congress.

inhabitants are served by companies that are not eligible under the Commission's current rules. Limiting eligibility so that a substantial majority of the rural inhabitants in specific states cannot obtain the cost, speed of deployment and other benefits of their local telephone carrier providing services is hardly consistent with the terms of the Budget Act.

Our proposed modification of the current eligibility rules is intended to encourage increases in the number of rural inhabitants who will be directly benefitted. We believe that these increases will provide important incentives for rural service development which are lacking under the Commission's current rules and policies.

2. Increasing the access line cap to 100,000 access lines or alternatively a \$100 million annual revenue limit for "rural telephone companies" by itself is not adequate to expand rural service options.\_

The Commission's definition of "rural telephone company" interjects into the Congressional mandate in the Budget Act a 50,000 access line cap which does not reasonably relate to Congressional objectives for expanding rural service development. We have proposed in our Petition that the 50,000 access line limitation be eliminated as it applies to "rural telephone" consortia. The reason for this request is that this cap restricts consortium eligibility in entirely counterproductive ways. As illustrated in the examples of rural inhabitants of Kentucky, Tennessee and Wisconsin, this access line cap is still substantially below the reasonable needs for service in rural areas as described above. In order to have a reasonable expectation of

rapid, cost-effective and widespread availability of rural service, the Commission's eligibility policies must be expanded to embrace a wider group of "rural telephone companies" than now qualify.

Some have suggested that one way to expand eligibility should be to increase the 50,000 access line limit which applies to individual companies to 100,000 access lines (or alternatively \$100 million in annual revenues). We have no objection to this increase provided companies qualifying under this increased limit are still required to satisfy the "community with 10,000 or fewer inhabitants" test, but it does not go far enough. Our figures indicate that in Kentucky, Tennessee and Wisconsin, the expansion of eligibility to include companies with 50,001 to 100,000 access lines (including affiliates) does not increase the number of eligible "rural telephone companies" serving the rural inhabitants in these states. Our proposed modifications are intended to create incentives for meaningful expansion of rural service options.

3. The Commission should reject proposals to permit companies not currently providing rural telephone service to participate in "rural telephone" consortia.

We agree with the position taken by NTCA that "...[t]he Congressional intent and the Commission's goals can best be achieved by alliances among rural telephone companies which have telecommunications expertise and a history of service to rural areas.<sup>8</sup> The Commission's policies regarding "rural telephone" consortium eligibility should be inclusive as they relate to companies already providing rural telephone service.

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<sup>8</sup> NTCA, p. 12.

We believe that the Commission's eligibility restriction which requires bidders already to be providing rural telephone service in communities with 10,000 or fewer inhabitants is the right focus to achieve the Congressional mandate for rural service. The Commission has a responsibility to devise policies targeted to benefit rural inhabitants and should not lose sight of this fundamental objective. This means that whatever decision is made regarding eligibility policies, there will be a continuing need to assure that the companies involved are already primarily engaged in providing rural service under the Commission's community size test.<sup>9</sup>

The possibility that rural telephone companies might not be able to participate in a "rural telephone" consortium because an entity not in the rural telephone business has taken a substantial non-controlling equity interest which precludes such participation is plainly contrary to Congressional objectives in the Budget Act. The rural inhabitants served by such telephone companies deserve the benefits of service deployment by their local telephone carrier, which is protected under the terms of our proposed modification of the Commission's rules and policies. For this

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<sup>9</sup> Several of the Petitions have indicated that the qualifications for eligibility as a "small business" should be expanded or clarified to include specifically defined meanings of that term as applied to "rural telephone companies" which may also want to qualify as "small businesses." We agree and support possible use of an access line limit or of an annual revenue test for this purpose. Company size, whether it is measured in terms of access lines or annual revenues, is clearly relevant as a possible basis for defining how the term, "small business," would apply in that context.

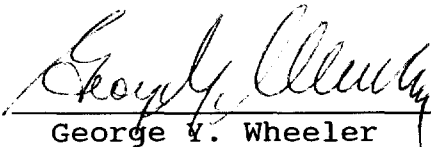
reason, we oppose the proposals of Blooston (pp. 10-13) and U.S. Intelco (p. 3) in this regard.

#### CONCLUSION

We recommend the adoption of strong policies to expand rural service opportunities and to recognize the unique role of rural telephone companies in the provision of such services. We believe that "rural telephone" consortia which bring together the companies already engaged in important rural service are the appropriate means to implement the rural service mandate in the Budget Act. Companies should not be excluded or included on the basis of size alone (i.e. access lines or annual revenues). The most important factor has to be telephone service to rural inhabitants (i.e. service to communities with 10,000 or fewer inhabitants) which policy the Commission should retain as the essential eligibility qualification for all participants in a "rural telephone" consortium.

Respectfully submitted,

**TELEPHONE AND DATA SYSTEMS, INC.**

By   
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June 29, 1994

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of June, 1994, a copy of the foregoing Comments of Telephone and Data Systems, Inc. were deposited in the U.S. mail, postage prepaid, addressed to the following:

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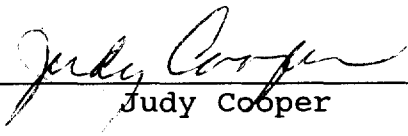
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